APPARATECH (M) SDN BHD

v.

NG HOCK CHONG & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[CIVIL SUIT NO: D4-22-1442-2002]
10 OCTOBER 2005

CIVIL PROCEDURE: *Anton Piller Order - Application to set aside - Where order is vague or ambiguous in description making it impossible to be complied with*

CIVIL PROCEDURE: *Anton Piller Order - Ex parte application - Duty of full and frank disclosure - Effect of misleading averments in obtaining Anton Piller order - Effect of non-compliance with O. 29 r. 1(2A) Rules of the High Court 1980*

CIVIL PROCEDURE: *Anton Piller Order - Nature of order and principles applicable - Whether such order may be granted at any stage of an action*

CIVIL PROCEDURE: *Anton Piller Order - Non-compliance with order by one party - Contempt of court - Burden and standard of proof required*

CIVIL PROCEDURE: *Contempt of court - Whether contemnor must first purge his contempt before he can be heard - Whether profusely apologising to court may purge contempt*

CIVIL PROCEDURE: *Contempt of court - Non-compliance with Anton Piller Order - Burden and standard of proof required*

The plaintiff was a dealer in scientific and educational equipment. The first defendant was employed by the plaintiff as a manager and was entrusted by the plaintiff to fully take charge of the plaintiff's operational and financial matters as well as the day-to-day operations of the plaintiff. The first defendant, whilst still an employee of the plaintiff had joined the second defendant as a director. The plaintiff alleged against the first defendant a breach of duty of good faith and fidelity, misuse of confidential information and breach of a duty to act honestly. According to the plaintiff, the confidential information relevant to this action included all documents and records pertaining to the tender strategy, price list,

numerous private and confidential documents and computer data relating to several projects. The plaintiff also alleged that the first defendant and the second defendant had conspired to injure the plaintiff. The plaintiff obtained an *ex parte* Anton Piller order *inter alia* on the grounds that the first defendant had stolen and made use of purportedly confidential information from documents belonging to the company and that without those documents, the plaintiff could not operate its business, and that the confidential documents allegedly kept at the second defendant's premises were required by the plaintiff to prove the plaintiff's claim.

By way of encl. 14, the defendants sought to set aside the *ex parte* Anton Piller order on the grounds that there was non-compliance with O. 29 r. 1(2A) of the Rules of the High Court 1980 ('RHC'), want of disclosure and the privilege against self incrimination rule, non-justification of granting an Anton Piller order and that the Anton Piller order is too wide, imprecise, vague and oppressive.

The plaintiff sought by way of encl. 46 to commit one Mr. Koay Chee Hong ('Koay'), the director of the second defendant, for contempt. It was alleged that Koay had "deliberately and/or intentionally and/or wilfully refused to allow the named persons to carry out the execution of the Anton Piller order at the first floor of the premises." The Anton Piller order specifically limited the execution at the premises located at Suite 18-2 which was on the second floor. In his affidavit, Koay stated that he acted as he did upon the advice of his solicitors. One Mr. Goh, a solicitor, on behalf of Koay stated that Koay was unable to comply with the Anton Piller order because the "documents are protected under the Official Secrets Act". It was further stated that the Anton Piller order was not specific and in fact vague and ambiguous.

Held, dismissing encl. 46 and granting an order in terms of encl. 14:

[1] The general rule stating that he who disobeys an order of the court cannot be heard nor embark in the same proceeding until he has purged his contempt is a rather out dated general rule that needs to be revamped. The antiquated general rule will not bar nor prevent a contemnor to clear the very contempt which he is said to have committed. (pp 66 C & 67 E)

[2] The Anton Piller order specifically limited the execution at the premises located at Suite 18-2 which was on the second floor. Thus, execution on the first floor would be in violation of the Anton Piller order. In law, Koay was not obliged to permit a search to be made on the first floor. Koay did not violate the Anton Piller order. Moreover, the plaintiff had not discharged its burden of proving beyond reasonable doubt that Koay had "deliberately and/or intentionally and/or wilfully" refused to allow the execution of the Anton Piller order. (p 68 D - E)

[3] In a charge for contempt there is no room for implication. Only the relevant facts must be specifically proved. The plaintiff had failed to establish the essential ingredients of the charges levelled against Koay, in encl. 46, beyond reasonable doubt. Furthermore, the list of items as set out in Schedule 1 of the Anton Piller order which were sought to be searched, inspected, photographed and delivered for safe keeping of the plaintiff's solicitors were so unquestionably vague and/or ambiguous in description as to make it practically impossible for Koay to comply with the said order. The Anton Piller order was in the nature of a fishing expedition. (pp 70 B & 71 B - C)

[4] If Koay was in contempt of the Anton Piller order, he had, by profusely apologising to the court, purged his contempt. (p 71 I)

[5] An Anton Piller order is a mandatory order of the court and it may be granted *ex parte* in favour of the plaintiff wherein the plaintiff would be authorised to enter the premises of the defendant in order to search for articles and documents kept in the said premises and to inspect them physically and even remove them for safe-keeping. It is to prevent the destruction or concealment of materials which may be relevant in any pending or intended litigation. Such an order may even be granted at any stage of an action. It is very flexible and it may even be granted before the issuance of the writ of summons and in some cases it may even be granted after judgment and solely for the purpose of aiding execution. The plaintiff must show, in order to obtain an Anton Piller order, that there is a "very strong *prima facie*

case against the defendant." To do this, the plaintiff must show that there is a valid cause of action and that judgment would be granted in favour of the plaintiff. (pp 72 D - F & 73 B)

[6] The duty of full and frank disclosure on the part of the plaintiff makes it imperative that there would not be any misleading averments made in the course of obtaining the Anton Piller order. There was failure on the part of the plaintiff to make a full and frank disclosure when applying for the Anton Piller order. The plaintiff failed to address the court on those matters specifically required under the provisions of O. 29 r. 1(2A) of the RHC by suppressing material facts known to the plaintiff which may have led the court not to grant the Anton Piller order. There was not only an inadequate disclosure but there were also misrepresentations which ultimately led the court to grant the Anton Piller order on an *ex parte* basis. (pp 77 I, 78 A - B, I & 79 A)

[7] If the duty of full and frank disclosure was not observed by the plaintiff and there were misleading averments advanced by the plaintiff, the court is entitled to discharge the Anton Piller order. This would even be so if, after a full enquiry, the view taken was that it was just and convenient that the Anton Piller order would probably have been made even if there have been a full disclosure. All the facts must be laid before the court and nothing must be suppressed otherwise the order of an injunction may be set aside without regard to the merits. Those who come "asking *ex parte* for injunctions must proceed with the highest good faith, and keep back no material facts". If it is shown that a plaintiff had innocently omitted to state circumstances which turn out to have a material bearing upon his rights, the injunction should be dissolved. (pp 80 H - I & 81 A - C)

[8] In an application for an Anton Piller order, the applicant is under a duty to bring to the notice of the court any matters affecting the property of the order which come to light before the order is executed. The plaintiff in obtaining the Anton Piller order had not disclosed to the court matters which were self-incriminating in nature and which were in breach of s. 123 of the Evidence Act 1950. (pp 81 G & 82 A)

[9] There was no justification for the plaintiff to seek an Anton Piller order. The plaintiff had offered no evidence to show that the defendants would have or had the intention of destroying the essential evidence. (p 84 C)

[10] Clause 2.1.4 of the Anton Piller order permitted the plaintiff to gain commercially from anything which the plaintiff might read or see notwithstanding the objection of the person who was served with the order. The Anton Piller order authorised the plaintiff to commit an illegal act with the ultimate financial gain. (p 85 H)

[11] The Anton Piller order granted to the plaintiff was too wide, imprecise, vague and oppressive in the extreme. The defendants were put in a dilemma as to what documents were covered under the Anton Piller order. All orders of the court should be expressed in clear and unambiguous terms especially where (as in the case of injunctions) the failure to comply will constitute contempt of court. An injunction should be framed so as to make it plain to those to whom it is directed, and to those who may be affected by it, the nature of the obligation arising from the order, so that they may know precisely what they are required to do or abstain from doing. These principles of law when applied to the facts of the present case weighed heavily in favour of the defendants. (p 86 A, F - H)

Case(s) referred to:

Anton Piller KG v. Manufacturing Processes Ltd & Ors [1976] 1 All ER 779 ***(refd)***

Asia Pacific Parcel Tankers Ptd Ltd v. The Owners of the Ship or Vessel "Normar Splendour" [1999] 7 CLJ 213 HC ***(refd)***

Attorney-General v. Staffordshire County Council [1905] 1 Ch 336 ***(refd)***

Booker McConnell plc v. Plascow & Ors [1985] RPC 425 ***(refd)***

Boyce v. Gill [1891] 64 LJ 824 ***(refd)***

Collins v. Wayne Iron Works [1910] 76 Atl 24 ***(refd)***

Columbia Picture Industries Inc & Ors v. Robinson & Ors [1986] 3 All ER 338 ***(refd)***

Commercial Bank of the Near East Plc v. P [1989] NLJ 645 ***(refd)***

Daglish v. Jarvie [1851] 20 LJ Ch 475 ***(refd)***

Distributori Automatici Italia SpA v. Holford General Trading Co Ltd [1983] 3 All ER 750 ***(refd)***

EM1 Ltd v. Pandit [1975] 1 All ER 418 ***(refd)***

Garden Cottage Foods Ltd v. Milk Marketing Board [1984] 1 AC 130 HL ***(refd)***

A *Hadkinson v. Hadkinson [1952] 2 All ER 567* ***(refd)***
Lian Keow Sdn Bhd v. C Paramjothy & Anor [1982] 1 MLJ 217 ***(refd)***
Mah Siew Keong v. Bayu Gamitan Sdn Bhd & Other Appeals [2002] 1 CLJ 695 CA ***(refd)***
Morris v. Redland Bricks Ltd [1970] AC 652 ***(refd)***
B *O'Regan & Ors v. Lambic Productions Ltd [1989] New Law Journal, vol 139* ***(refd)***
PMK Rajah v. Worldwide Commodities Sdn Bhd & Ors [1985] 1 MLJ 86 ***(refd)***
R v. Kensington Income Tax Commissioners [1917] 1 KB 486 ***(refd)***
Rank Film Distributors Ltd & Ors v. Video Information Centre & Ors [1980]
C *2 All ER 273* ***(refd)***
Rank Film Distributors Ltd & Ors v. Video Information Centre & Ors [1981] 2 All ER 76 ***(refd)***
Schmitten v. Faules [1893] WN 64 ***(refd)***
Siporex Trade SA v. Comdel Commodities Ltd [1986] NLJ 538 ***(refd)***
Thermax Ltd v. Schott Industrial Glass Ltd [1981] FSR 289 ***(refd)***
D *UMAS Sdn Bhd v. RHB Bank Berhad & Anor [2001] 1 AMR 1024* ***(refd)***
Yousif v. Salama [1980] 1 WLR 1540 ***(refd)***
Yousif v. Salama [1980] 3 All ER 405 ***(refd)***

Legislation referred to:
E Commodities Trading Act 1980, ss. 56(2), 59(2)
Evidence Act 1950, s. 123
Rules of the High Court 1980, O. 29 r. 1(2A)

Other source(s) referred to:
Arlidge, Eady & Smith, *Contempt*, 2nd edn, paras 12-43, p 746

F *For the plaintiff - Ling Hua Keong (Naraendran Thiagarajah with him); M/s Isa, Ling & Mok*
For the defendants - Mahinder Singh Dulku (Tan Kim Soon & Devano Hasbi with him); M/s Tan Kim Soon & Co

G *Reported by Amutha Suppayah*

JUDGMENT

Abdul Malik Ishak J:

H **Introduction**
For the sake of expediency, I considered two enclosures in this judgment since they were related to one another.

Enclosure 14 was the defendants' application to set aside the
I Anton Piller order dated 20 September 2002 that was obtained by the plaintiff while encl. 46 was the plaintiff's application for committal proceeding against Mr. Koay Chee Hong. It would be

appropriate to consider encl. 46 first. And thereafter encl. 14 would be considered. Indeed this was what the parties wanted the court to do.

Is there a general rule that states that a contemnor will not be heard until he has purged his contempt? Can this general rule be applied in this case so as to deprive the contemnor from taking the stand in the witness box and purge his contempt? These two very simple and basic questions have been the bone of contentions of the legal practitioners in this country. He who disobeys an order of the court cannot be heard nor embark in the same proceeding until he has purged his contempt. It is a rather out dated general rule that needs to be revamped. How could the contemnor purge his contempt if he is not allowed to be heard? Denning LJ, a brilliant judge of his time and is still acknowledged as such, adopted a flexible approach in dealing with this antiquated general rule. According to Denning LJ in *Hadkinson v. Hadkinson* [1952] 2 All ER 567, 573, the origin of this general rule can be traced to the canon law which was later adopted by the Chancery court and the Ecclesiastical court. It seems that this antiquated general rule has its origin during Lord Bacon's time in 1618 which states, *inter alia*, that:

> They that are in contempt ... are not to be here [?heard] neither in that suit, nor in any other, except the court of special grace suspend the contempt.

At p. 573 to p. 574 of the report in the case of *Hadkinson v. Hadkinson (supra)*, Denning LJ aptly said:

> The ordinance of Lord Bacon was, however, capable of working great injustice and in the course of practice, it came to be much restricted in scope. It was confined to cases where a party in contempt, that is, a party against whom a writ of attachment had issued or an order for committal had been made, came forward voluntarily and asked for an indulgence in the self-same suit.

Hadkinson v. Hadkinson (supra) is now the modern authority for contemnors to rely upon. It is an authority that gives the comtemnors the right to be heard in the courts. Factually speaking, the facts of *Hadkinson v. Hadkinson* may be stated in this way. There, the wife was given custody of the son out of the marriage subject to a requirement that the boy should not be taken out of jurisdiction. The wife breached the order and took the son to Australia. The husband applied to the court and the court ordered the wife to bring back the son to England. The wife

wanted to appeal against the order of the court but the Court of Appeal refused to hear her appeal until she brought back the son to England. While Romer LJ and Somervell LJ were of the views that a contemnor will not be heard until he has purged his contempt subject to certain exceptions, Denning LJ preferred a flexible approach to deal with the matter at hand. At p. 575 of the report, Denning LJ had this to say:

> Applying this principle, I am of opinion that the fact that a party to a cause has disobeyed an order of the court is not of itself a bar to his being heard, but if his disobedience is such that, so long as it continues, it impedes the course of justice in the cause, by making it more difficult for the court to ascertain the truth or to enforce the orders which it may make, then the court may in its discretion refuse to hear him until the impediment is removed or good reason is shown why it should not be removed.

And according to Denning LJ, at p. 575 of the report, the case at hand was a "good example of a case where the disobedience of the party impedes the course of justice. So long as this boy remains in Australia, it is impossible for this court to enforce its orders in respect of him."

For my part, the antiquated general rule will not bar nor prevent a contemnor to clear the very contempt which he is said to have committed. All these are said and have been said in the context of encl. 46.

In regard to encl. 14, I have this, by way of a prelude, to say.

Seeking an Anton Piller order was just like saying that the defendants were not to be trusted and that they were capable of destroying the evidence and thereby depriving the plaintiff of its legal right at law (per Sir Peter Pain in *O'Regan and Ors v. Lambic Productions Ltd* [1989] New Law Journal, vol. 139, at p. 1378). No wonder the defendants filed encl. 14 to rid themselves of that "plague". Many judges say that an Anton Piller order is very draconian and it carries with it a very drastic effect when it is executed. It is for these salient reasons that an Anton Piller order should only be granted in very exceptional cases (*Thermax Ltd v. Schott Industrial Glass Ltd* [1981] FSR 289; and *Columbia Picture Industries Inc & Ors v. Robinson & Ors* [1987] Ch 38, [1986] 3 All ER 338).

I will now examine these two enclosures, one after the other.

Enclosure 46

The plaintiff sought by way of this enclosure to commit Mr. Koay Chee Hong, the director of the second defendant, for contempt. Only two specific charges were preferred against Mr. Koay Chee Hong ("Koay") in encl. 46. The first charge can be seen in para. 1.1 of encl. 46 and the second charge is set out in para. 1.2 thereto. I shall confine myself to these two charges in this judgment.

In the first charge, it was alleged that Koay had "deliberately and/or intentionally and/or wilfully refused to allow the named persons to carry out the execution of the Anton Piller order on 23 September 2002 at or about 5pm at the first floor of the premises." The premises would be located at the Pekeliling Business Centre, Suite 18-2, Persiaran 65C, off Jalan Pahang Barat, 53000 Kuala Lumpur. Having read para. 1.1 of the Anton Piller order, it specifically limits the execution at the premises located at Suite 18-2 which is on the second floor. Thus, execution on the first floor would be in violation of the Anton Piller order. In law, Koay was not obliged to permit a search to be made on the first floor. Strictly speaking, Koay did not violate the Anton Piller order. Moreover, the plaintiff has not discharged its burden of proving beyond reasonable doubt that Koay had "deliberately and/or intentionally and/or wilfully" refused to allow the execution of the Anton Piller order. In his affidavit that was affirmed on 17 March 2003 as seen in encl. 53, Koay has specifically stated that he acted as he did upon the advice of his solicitors. This is clearly borne out by the "Report of Mr. Ranjit Singh, supervising solicitor appointed by the court order dated 20 September 2002". This report is annexed to the affidavit of David Ng Hock Heng affirmed on 30 September 2002 as seen in encl. 10. At para. 12 of Mr. Ranjit Singh's report there was reference to the explanation given by one Mr. Goh, a solicitor, on behalf of Koay as to why Koay was unable to comply with the Anton Piller order. One very compelling reason was this. That the "documents are protected under the Official Secrets Act" and another equally compelling reason was that the Anton Piller order was not specific and in fact vague and ambiguous.

Paragraph 2 of the Anton Piller order carries the sub-heading "Restrictions on the service and carrying out of para. 1 of this order" and in particular to sub-para. 2.1.6 which reads as follows:

> The premises must not be searched, and items must not be removed from them except in the presence of the defendants, Ng Hock Chong's and Selamat Ekuiti Sdn Bhd's agents, employees or servants or otherwise.

There was no denial by the plaintiff that the first defendant by the name of Ng Hock Chong was not at the premises, at all material times, at the time of the execution of the Anton Piller order. In the absence of the first defendant and by the clear terms of the Anton Piller order that "the premises must not be searched and items must not be removed from them", Koay who was a director of the second defendant was "not an agent or employee or servant" of the first defendant. The Anton Piller order is even more explicit in para. 7(a) thereof and it states as follows:

> A defendant who is an individual who is ordered to do something must do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

Then there is para. 11.2(a) of the Anton Piller order which states that "references to 'the defendant' mean 'both or all of them'." That being the case, it would be correct to say that the plaintiff could not validly execute the Anton Piller order in the absence of one of the defendants. Compliance with the Anton Piller order must be done jointly by the defendants and not severally in view of the specific terms of the said order.

In regard to the second charge, it is appropriate to reproduce para. 1.2 of encl. 46 which states as follows:

> ... deliberately and/or intentionally and/or wilfully misrepresented to the supervising solicitor and the plaintiff's solicitors that the premises was not Selamat Ekuiti premises on 23.9.2000 at or about 2.10 p.m. at the second floor of the premises.

And the above allegation, even if true, would not amount to a contempt of the Anton Piller order because as at 2.10pm the Anton Piller order had not yet been served on Koay. It was only served at 2.15 p.m. This fact can be seen in paras. 5 and 6 of Mr. Ranjit Singh's statement marked as exh. "NHH3" annexed to the affidavit in encl. 12.

In his affidavit in encl. 53, Koay has explained that Mr. Ranjit Singh had not introduced himself at 2.10pm on the second floor but only introduced himself at about 2.15pm at the first floor at the time of the service of the Anton Piller order (see the

averments at para. 11 of encl. 53). In the circumstances, Koay's alleged reactions at 2.10pm were perfectly understandable and in this connection Koay is corroborated by Mr. Ranjit Singh in para. 12 (vii) of his statement marked as exh. "NHH3" annexed to the affidavit in encl. 10.

The alleged removal of the signboard of the second defendant by an unidentified person can hardly be blamed on Koay. I must categorically say that in a charge for contempt there is no room for implication. Only the relevant facts must be specifically proved. Be that as it may, it must be emphasised that Koay has denied the allegation as found in para. 15 of the affidavit in encl. 53. Of significance would be this salient fact. That no one, including the supervising solicitor, saw it fit to obtain an explanation from Koay in regard to the missing signboard (see para. 10 of Mr. Ranjit Singh's report marked as exh. "NHH3" annexed to the affidavit in encl. 10). It was certainly food for thought. In the premises, the whole aspect of the matter was nothing more than mere surmises and pure conjectures and the conclusion was rather obvious. That Koay was not in contempt of court.

I have in *Asia Pacific Parcel Tankers Ptd Ltd v. The Owners of the Ship or Vessel "Normar Splendour'* [1999] 7 CLJ Supp 213 held that civil contempt just like criminal contempt must be proved beyond reasonable doubt. In *Mah Siew Keong v. Bayu Gamitan Sdn Bhd (and 4 other Appeals)* [2002] 1 CLJ 695, Gopal Sri Ram JCA delivering the judgment of the Court of Appeal aptly said at p. 698 of the report:

> In our view, if, as here, an *ex parte* injunction is drafted in wide and ambiguous terms, it is, difficult, if not impossible, to identify particular acts of contempt.

And further down the same page, his Lordship quoted with approval a passage from Arlidge, Eady & Smith on *Contempt*, 2nd edn, para. 12-43, p. 746, which reads as follows:

> An order or undertaking will not be enforced by committal if its terms are ambiguous, the rule being analogous to that which governs the interpretation of penal statutes. It is to the terms of the order itself that one must look in order to define the obligations imposed.

A Approaching encl. 46 with care and circumspection, and after applying the principles of law as enunciated in *Asia Pacific Parcel Tankers Ptd Ltd v. The Owners of the Ship or Vessel 'Normar Splendour' (supra)*, it was clear beyond peradventure that the plaintiff has failed to establish the essential ingredients of the two B charges levelled against Koay, in encl. 46, beyond reasonable doubt. Furthermore, the list of items as set out in Schedule 1 of the Anton Piller order which were sought to be searched, inspected, photographed and delivered for safe keeping of the plaintiff's solicitors were so unquestionably vague and/or ambiguous C in description as to make it practically impossible for Koay to comply with the said order (*Mah Siew Keong v. Bayu Gamitan Sdn Bhd (and 4 other Appeals) (supra)*). To say the least, the Anton Piller order was in the nature of a fishing expedition.

D The learned counsel for Koay took an unprecedented step, a measure calculated to overcome the rigours of encl. 46. He advised Koay to take the stand and to apologise to this court for showing disrespect to this court. The learned counsel thought that Koay was in contempt and the best legal recourse would be to E apologise to this court under oath. I have demonstrated that Koay was not in contempt and I have given the reasons for arriving at that decision. Having read the cause papers, I knew that Koay was not in contempt. But, in the event, I was wrong and the Court of Appeal felt otherwise then there was nothing on record F to show that Koay had apologised to this court. What should I do when a party wishes to apologise thinking that he has been in contempt and for fear of being imprisoned he now admits that he is in contempt and wants to apologise profusely and throw himself to the mercy of this court? As a judge, I have to be magnanimous. G I have to be kind and forgiving. I gave and I did give Koay the chance to apologise on the footing that Koay was in contempt bearing in mind that the Court of Appeal may not agree with my decision that Koay was not in contempt at all. Surely the three judges of the Court of Appeal sitting in an appellate jurisdiction H would be able to see things in a different light different from my way of thinking and rationalising.

Koay took the stand and apologised profusely. If Koay was in contempt and I must hold that if he was really in contempt of the Anton Piller order dated 20 September 2002 he had by profusely I apologising to this court purged his contempt. I accepted his apology and I admonished and discharged him accordingly.

For all these reasons, I dismissed encl. 46 forthwith.

Enclosure 14

On 20 September 2002, the plaintiff obtained an *ex parte* Anton Piller order. Armed with that order, the plaintiff entered the defendant's premises in order to execute the Anton Piller order. This was on 23 September 2002, but unfortunately the plaintiff failed to do so. On 8 October 2002, an inter parte hearing of the Anton Piller order was heard. Meanwhile, the defendants filed their summons in chambers in encl. 14 in order to set aside the Anton Piller order.

It is the norm to apply for an Anton Piller order in order to enter and search and seize for articles or documents stored or kept in certain premises. An element of surprise would be the key factor. Of course, an Anton Piller order is a mandatory order of the court and it may be granted *ex parte* in favour of the plaintiff wherein the plaintiff would be authorised to enter the premises of the defendant in order to search for articles and documents kept in the said premises and to inspect them physically and even remove them for safe-keeping. It is to prevent the destruction or concealment of materials which may be relevant in any pending or intended litigation that an Anton Piller order is usually obtained. The courts have always been magnanimous in granting Anton Piller orders. Indeed, such an order may even be granted at any stage of an action. It is very flexible and it may even be granted before the issuance of the writ of summons and in some cases it may even be granted after judgment and solely for the purpose of aiding execution as seen in the case of *Distributori Automatici Italia SpA v. Holford General Trading Co Ltd* [1983] 3 All ER 750. An Anton Piller order is a very effective armoury for legal practitioners. It extends to all kinds of cases and it will scare the daylights of those recalcitrant defendants (*Yousif v. Salama* [1980] 3 All ER 405; and *Lian Keow Sdn. Bhd. v. C. Paramjothy & Anor.* [1982] 1 MLJ 217).

As the name implies, an Anton Piller order derives its name from the case of *Anton Piller KG v. Manufacturing Processes Ltd and Others* [1976] 1 All ER 779, a decision of the Court of Appeal. It has even received the approval of the House of Lords in the case of *Rank Film Distributors Ltd & Others v. Video Information Centre & Others* [1981] 2 All ER 76.

In Malaysia, the courts too have granted Anton Piller orders. It started with the case of *Lian Keow Sdn. Bhd. v C. Paramjothy & Anor. (supra)* and it is now a common feature in our courts.

The plaintiff must show, in order to obtain an Anton Piller order, that there is a "very strong *prima facie* case against the defendant." To do this, the plaintiff must show that there is a valid cause of action and that judgment would be granted in favour of the plaintiff.

That would be the brief legal discourse on the law of Anton Piller. I will now proceed to, briefly, narrate the facts.

The plaintiff was incorporated on 14 January 1983 to carry on business as a dealer, supplier and technical consultant of scientific and educational equipment and apparatus imported from the United Kingdom, Italy, Germany and all other countries in the fields of electronic, electrical, mechanical, chemical, civil and food technology engineering for the universities, polytechnics and technical colleges. In addition to that, the plaintiff was also to supply, deliver, install and commission scientific and educational equipment and apparatus to the various Ministries, universities, polytechnics and all government and private colleges. Seen in that context, the plaintiff certainly had their hands full. At all material times, the plaintiff was the sole and exclusive agent in Malaysia appointed by the principals from overseas.

The first defendant by the name of Ng Hock Chong is the younger brother of David Ng Hock Heng. The latter is the managing director of the plaintiff. In 1992, the first defendant was employed by the plaintiff as a manager. The first defendant was entrusted by the plaintiff to fully take charge of the plaintiff's operational and financial matters as well as the day-to-day operations of the plaintiff. During the employment of the first defendant with the plaintiff, the latter relied entirely on the first defendant to deal with the principals who were overseas and the first defendant had to prepare and submit tender documents for the projects of the Ministries, universities, polytechnics and all other government and private colleges. The first defendant also took charge of marketing and other related matters.

The plaintiff alleged several grounds of cause of action against the first defendant and they may be stated as follows:

(i) breach of duty of good faith and fidelity;

(ii) breach of duty as long as the contract of employment subsisted not to misuse any information confidential to the plaintiff or to disclose such information to any third party;

(iii) breach of duty following the termination of the contract of employment not to use or disclose any trade secrets or other highly confidential information of the plaintiff; and

(iv) breach of a duty to act honestly.

According to the plaintiff, the confidential information relevant to this action would include all documents and records pertaining to the tender strategy, the principals' price list of the scientific and educational equipment and apparatus, numerous private and confidential documents and computer data relating to various projects of the Ministry of Education, Ministry of Labour, Ministry of Defence, Ministry of Youth and Sports, all UITMs, University Technology Petronas, Polytechnics at Tanjung Malim and Kulim, other universities and colleges.

It was said that from April 2002 to July 2002, the first defendant and three other employees resigned. It was said that sometime in March 2002, the first defendant and the second defendant unlawfully conspired with the sole and predominant purpose to injure the plaintiff by unlawful means in that:

(a) the first defendant whilst still an employee of the plaintiff had on 1 March 2002 joined the second defendant as a director;

(b) on dates presently unknown to the plaintiff (prior to the resignation of the first defendant), the first defendant had approached other employees of the plaintiff to leave the employment of the plaintiff and join the new business, namely the second defendant;

(c) on dates presently unknown to the plaintiff (prior to the resignation of the first defendant), the first defendant had removed or caused the confidential information to be removed from the plaintiff's office and still are making use of the same for his own purposes and for the purposes of the second defendant;

(d) the first defendant in breach of the employment contract had resigned on 30 June 2002 without giving sufficient notice;

A (e) on dates presently unknown to the plaintiff (prior to the resignation of the first defendant), the first defendant had wrongfully procured and induced the employees of the plaintiff to leave the employment with the plaintiff and to enter the employment of the second defendant;

B (f) the defendants wrongfully procured the termination of the sole and exclusive agency contract between the plaintiff and their suppliers, namely, Feedback, Armfield and Denford by inducing them to terminate the sole and exclusive agency contract with C the plaintiff to supply the scientific and educational equipment and apparatus;

(g) on diverse dates from early 2002 till to date, the defendants have falsely and maliciously represented to the suppliers that the second defendant is a more competent company to D undertake the sole and exclusive agency; and

(h) on diverse dates from early 2002 till to date, the defendants have represented to the customers that the second defendant is the agent for Armfield, Feedback, P.A. Hilton, Denford and E Didacta Italia.

All these, according to the plaintiff, constituted the alleged conspiracy which the first defendant and the second defendant were said to have conspired to injure the plaintiff.

F Now, the plaintiff had sought by way of an *ex parte* summons in chambers in encl. 3 supported by an affidavit affirmed by David Ng Hock Heng on 13 September 2002 as reflected in encl. 4 and successfully obtained an *ex parte* Anton Piller order on 20 September 2002. In obtaining the *ex parte Anton Piller* order, G the plaintiff made the following allegations:

(1) that the first defendant had made use of purportedly confidential information from documents belonging to the company without its consent;

H (2) that the first defendant had stolen or otherwise committed theft of such documents including the "price lists" and "tender strategy" at the plaintiff's premises and had removed, erased and taken them away from there to the office of the second I defendant;

(3) that without those documents, the plaintiff could not operate its business;

(4) that as a result of which the plaintiff's business came to a standstill and practically crippled;

(5) that the confidential documents allegedly kept at the second defendant's premises were required by the plaintiff to prove the plaintiff's claim; and

(6) that the *ex parte* application was filed in order to catch the defendants by surprise.

The *ex parte* Anton Piller order permitted an entry of the supervising solicitor by the name of Mr. Ranjit Singh s/o Harbinder Singh accompanied by three Advocates and Solicitors from Messrs Isa, Ling & Mok (the plaintiff's solicitors) together with six other persons who were the agents/representatives of the plaintiff and two other police personnel at the premises known as Pekeliling Business Centre, Suite 18-2, Persiaran 65C, off Jalan Pahang Barat, 53000 Kuala Lumpur in order to search, inspect, photograph or photocopy and deliver into safe keeping of the plaintiff's solicitors all documents and articles which are listed in the list of items annexed as Schedule 1.

By way of encl. 14, the defendants sought to set aside the *ex parte* Anton Piller order obtained by the plaintiff and I must now consider encl. 14 under several sub-heads:

(A) Non-compliance With O. 29 r. 1(2A) Of The Rules Of The High Court 1980 (RHC)

Order 29 r. 1(2A) of the RHC states as follows:

(2A) The affidavit in support shall contain a clear and concise statement:

(a) of the facts giving rise to the claim against the defendant in the proceedings;

(b) of the facts giving rise to the claim for the interlocutory relief;

(c) of the facts relied on as justifying application *ex parte*, including details of any notice given to the defendant or, if none has been given, the reason for giving none;

(d) of any answer asserted by the defendant (or which he is thought likely to assert) either to the claim in the action or to the claim for interlocutory relief;

(e) of any facts known to the applicant which might lead the Court not to grant relief *ex parte*;

(f) of whether any previous similar *ex parte* application has been made to any other Judge, and if so, the order made in that previous application; and

(g) of the precise relief sought.

Clement Skinner J in *UMAS Sendirian Berhad v. RHB Bank Berhad & Anor* [2001] 1 AMR 1024 emphasised the need to comply strictly with r. 1(2A) of O. 29 of the RHC and this was what his Lordship said (see p. 1042 of the report):

> The consequence of the plaintiff's failure to comply with r. 1(2A) of Order 29 is that the injunction having being obtained in breach of r. 1(2A) which requires strict compliance with its terms, it must be discharged, to do otherwise would defeat the policy behind the introduction of r. 1(2A). To this end I would refer to the clear direction of the Court of Appeal to High Court Judges in this particular regard in the case of *Motor Sports International Ltd & 2 Ors v. Delcont (M) Sdn Bhd* [1996] 2 AMR 2313. Although that was a case involving the grant of a Mareva injunction on an *ex parte* summons, I nevertheless regard what was stated there as applying to all injunctions granted on an *ex parte* basis and binding on me. This is what his Lordship Gopal Sri Ram JCA speaking for the Court of Appeal said at p 2318:
>
> > The provisions of Order 29 r. 1(2A) were introduced by amendment in order to ensure that *ex parte* injunctions of **any sort** were not granted willy-nilly, but only in cases where they were truly called for. In order to ensure that the policy behind the introduction of r1(2A) is not defeated, High Courts **must demand strict** compliance with its terms. More so, when the relief applied for is in the nature of a Mareva or an Anton Piller type of injunction because of the incalculable harm and damage that may be caused to a defendant by the grant of either of these orders. (emphasis added)
>
> For the reasons given above, I order that the injunction granted on May 2, 2000 be discharged with costs to the first and second defendants in any event.

The duty of full and frank disclosure on the part of the plaintiff made it imperative that there would not be any misleading averments made in the course of obtaining the Anton Piller order on 20 September 2002. Was there any failure on the part of the

plaintiff to make a full and frank disclosure when applying for the Anton Piller order on 20 September 2002? I would answer this question in the positive. I must categorically say that the plaintiff failed to address the court on those matters specifically required under the provisions of O. 29 r. 1(2A) of the RHC by suppressing material facts known to the plaintiff which might lead the court not to grant the Anton Piller order. The material facts that were suppressed may be stated as follows:

(1) that David Ng Hock Heng knew but refused to reveal to the court that there were other third parties that were sharing the premises at Suite 18-2, Persiaran 65C, off Jalan Pahang Barat, 53300 Kuala Lumpur;

(2) that David Ng Hock Heng knew but refused to tell the court that third parties were also involved in the same business and that they were competing with each other and against the plaintiff and that the scope of List 1 – pertaining to the list of documents annexed to the Anton Piller order, also included documents from the third parties; and

(3) that David Ng Hock Heng knew but refused to reveal to the court that the rights of third parties to protect their own properties might be infringed if the Anton Piller order was executed.

It must be emphasised that the Anton Piller order is just like a search warrant which allows entry and search on the premises identified. It is a very harsh remedy. It puts fright to those affected. It gives the power to the plaintiff to force the defendant, by way of an Anton Piller order, to allow the plaintiff to enter into the defendant's premises in order to inspect and remove documents and materials which are relevant to the litigation. In *EM1 Ltd v. Pandit* [1975] 1 All ER 418, the English court allowed an *ex parte* application for an Anton Piller order without notice to the defendant in "exceptional and emergency cases." Such being the nature of an Anton Piller order, there is a strict duty imposed on the plaintiff to make a full and frank disclosure. If the plaintiff should err, at all, in obtaining the *ex parte* Anton Piller Order, it should, according to Scott J in *Columbia Picture Industries Inc v. Robinson* [1986] 3 All ER 338, be on the side of excessive disclosure. Here, there was not only an inadequate disclosure but there were also misrepresentations which ultimately led the court

to grant the Anton Piller order on an *ex parte* basis. On perusal of the affidavits there were contradictory versions between the documents in two different affidavits. Allow me to elaborate:

(1) In regard to the apparent loss of employment contract which does not exist, David Ng Hock Heng had deposed of the existence of the employment contract in the affidavit in encl. 4 in exh. "DN3" yet he also deposed at para. 7 of the affidavit in encl. 28 that the first defendant had stolen the employment card.

(2) In regard to the first defendant's title in the plaintiff's company and the first defendant's right to obtain the commission, at paras. 8 to 11 of the affidavit in encl. 28 David Ng Hock Heng twisted the facts by stating that the first defendant was only the manager and has no right to secure and obtain the commission yet at para. 14(c) of the affidavit in encl. 4 in exh. "DN3" David Ng Hock Heng specified the first defendant's commission structure as the sales manager and in exh. "NHH3" of encl. 28 it showed the plaintiff's own calculation of the commission payable to the first defendant.

(3) In regard to the function of the first defendant, para. 46 of the affidavit in encl. 28 and exh. "NHH21" dated 21 october 2002 categorically stated that the first defendant was merely doing "follow-up" action and it was not consistent with David Ng Hock Heng's past averments at para. 12 of the affidavit in encl. 4 and at para. 56 of the affidavit in encl. 28 which stated that the first defendant was merely exercising full control of the plaintiff's internal operations and having access to the documents.

(4) In regard to the decline of the plaintiff's business which were apparently caused by stolen and misplaced documents attributed by the first defendant, it was averred to that effect at para. 26 of the affidavit in encl. 4 which led to the resignation of the first defendant and all these could not have happened if not for David Ng Hock Heng or his children's failure to be actively involved in the plaintiff's business while the first defendant was in the employment of the plaintiff.

(5) In regard to the plaintiff's financial position, paras. 79 to 81 of the affidavit in encl. 28 contradicted para. 26 of the affidavit in encl. 4 which stated that the plaintiff did not have

the financial ability to bear the damages as a result of the abuse of the court process in the course of the application for an Anton Piller order.

(6) In regard to the business relationship between the plaintiff and Interpac, the plaintiff had denied any knowledge and involvement in the IKBN project with Interpac in para. 40 (c) of the affidavit in encl. 4 and this must be viewed in the context of the contradicting stories as seen in paras. 43 (a), (b), 67, 68 and 69 of the affidavit in encl. 28. Initially, David Ng Hock Heng in para. 40(c) of the affidavit in encl. 4 stated that he has never dealt with Interpac for the IKBN project and that the first defendant had conspired without his knowledge with the plaintiff to procure the profit of RM200 million for the first defendant. Later, David Ng Hock Heng through an affidavit in encl. 28 particularised in detail the joint venture between Interpac and himself in regard to the IKBN project.

(7) In regard to the involvement between David Ng Hock Heng and Hi-Tech in the IKBN project, it must be emphasised that Hi-Tech was under the control of David Ng Hock Heng, at all material times, and it was established for the purpose of obtaining the mechanical package under the IKBN project and that the preparation of the tender documents were prepared by the plaintiff's employees. It is ideal to mention that paras. 63(1) and 63(m) of the affidavit in encl. 28 would show David Ng Hock Heng's involvement in the administration of Hi-Tech.

(8) In regard to the background of the transaction of *Prinsip Cergas (M) Sdn Bhd* for the sum of RM474,230, David Ng Hock Heng had alleged misrepresentation by the first defendant to the effect that the first defendant would be able to secure the IKBN project but he contradicted this averment at paras. 43, 43(d), 66 and 67 of the affidavit in encl. 28.

Now, if the duty of full and frank disclosure was not observed by the plaintiff and that there were misleading averments advanced by the plaintiff, the court is entitled to discharge the Anton Piller order. This would even be so if, after a full enquiry, the view taken was that it was just and convenient that the Anton Piller order would probably have been made even if there have been a full disclosure. By way of an analogy, Bingham J in *Siporex Trade*

A *SA v. Comdel Commodities Ltd.* [1986] NLJ 538 at 539 discharged a Mareva injunction for failure to make a full and fair disclosure. It must not be forgotten that all the facts must be laid before the court and nothing must be suppressed (*R v. Kensington Income Tax Commissioners* [1917] 1 KB 486) otherwise the order of an B injunction may be set aside without regard to the merits (*Boyce v. Gill* [1891] 64 LJ 824). It is an established law that those who come "asking *ex parte* for injunctions must proceed with the highest good faith, and keep back no material facts" (*Schmitten v. Faules* [1893] WN 64). According to the case of *Daglish v. Jarvie* C [1851] 20 LJ Ch 475, the party applying for an *ex parte* injunction is bound to state not only the facts that he considers material but also all the facts within his knowledge that are material. So, if it is shown that a plaintiff had innocently omitted to state circumstances which turn out to have material bearing upon his D rights the injunction should be dissolved. Zakaria Yatim J, (as he then was) in *PMK Rajah v. Worldwide Commodities Sdn Bhd & Ors* [1985] 1 MLJ 86, dissolved the *ex parte* Anton Piller order on the ground that the plaintiff there had either misrepresented or suppressed the material facts. In adjudicating encl. 14, it must be E highlighted that the non-disclosure and suppression of material facts and misleading facts asserted by the plaintiff in obtaining the Anton Piller order constituted a serious breach which, had it been disclosed or had the facts been properly presented, the court would not have granted the Anton Piller order. It was urged upon F me not to lend a hand to the plaintiff who sought equity with unclean hands and, consequently, it was pointed out that I ought to discharge the Anton Piller order forthwith. I willingly acceded.

(B) Want Of Disclosure And The Privilege Against Self Incrimination G *Rule*

The plaintiff in obtaining the Anton Piller order had not disclosed to this court matters which were self-incriminating in nature and which were in breach of s. 123 of the Evidence Act 1950 particularly in relation to the production of the documents sought H for in the Anton Piller order "requesting all information, documents, records or otherwise pertaining to the tender strategy for the various projects of the Ministry of Education, Ministry of Labour, Ministry of Defence, Ministry of Youth and Sports ..."

I

In an application for an Anton Piller order, the applicant is under a duty to bring to the notice of the court any matters affecting the property of the order which come to light before the order is executed. This simple proposition of the law was adopted by Sir Peter Pain, sitting as a High Court Judge, in the case of *O'Regan and Ors v. Lambic Productions Ltd (supra)*. There his Lordship applied the views of Saville J in *Commercial Bank of the Near East Plc v. P* [1989] NLJ 645 and proceeded to discharge the Anton Piller order for want of disclosure. Sir Peter Pain aptly said in O-Regan (see p. 1379 of the report):

> In a sense, it does not make much difference whether or not I discharge the Anton Piller order because it has already been executed, but I observe that in the judgment of Hoffman J in *Lock International Plc v. Beswick* [1959] NLJ 644, the judge said that the Anton Piller order there was inappropriate and expressed a strong view that he would discharge it in that case. I am happy to follow his judgment in this case in view of the affidavit filed at the last minute by the defendant which indicates that the defendant is obviously having difficulties in carrying on its business in the film-making trade. An Anton Piller order plainly carries the suggestion that a person is not to be trusted and is likely to destroy evidence. This is a very serious thing. People who owe a defendant money, or may enter into further obligations with him, are reluctant to carry on business with him in the ordinary way while this is hanging over him. Consequently, I discharge the Anton Piller order and I believe it to be fair to the defendant to express the view that if the true facts had been known the order should never have been made.

At the local scene, Zakaria Yatim J., (as he then was) in *PMK Rajah v. Worldwide Commodities Sdn Bhd & Ors (supra)* referred to the English Court of Appeal case of *Rank Film Distributors Ltd & Others v. Video Information Centre & Others* [1980] 2 All ER 273, CA, [1981] 2 All ER 76, H.L. and upheld the privilege against self-incrimination in the production of trading statement without disclosing the particulars of other clients which were confidential in nature and exposing the defendants to the offence of "bucketing" under ss. 56(2) and 59(2) of the Commodities Trading Act 1980.

(C) Non-justification Of Granting An Anton Piller Order

I have, in the early part of this judgment, referred to the case of *Anton Piller KG v. Manufacturing Processes Ltd and Others (supra)* from which the name of the order was derived and there Lord Denning MR in his judgment said at p. 783 of the report:

A Accepting such to be the case, the question is in what circumstances ought such an order be made. If the defendant is given notice beforehand and is able to argue the pros and cons, it is warranted by that case in the House of Lords and by RSC O. 29 r. 2(1) and (5). But it is a far stronger thing to make such an order *ex parte* without giving him notice. This is not covered by the rules of court and must be based on the inherent jurisdiction of the court. There are one or two old precedents which give some colour for it, *Hennessey v. Bohmann, Osborne & Co* [1877] WN 14, and *Morris v. Howell* [1888] 22 LRIr 77, an Irish case. But they do not go very far. So it falls to us to consider in on principle. It seems to me that such an order can be made by a judge *ex parte*, but it should only be made where it is essential that the plaintiff should have inspection so that justice can be done between the parties; and when, if the defendant were forewarned, there is a grave danger that vital evidence will be destroyed, that papers will be burnt or lost or hidden, or taken beyond the jurisdiction, and so the ends of justice be defeated: and when the inspection would do no real harm to the defendant or his case.

Writing a separate judgment in the same case, Ormrod LJ said at p. 784 of the report:

I agree with all that Lord Denning MR has said. The proposed order is at the extremity of this court's powers. Such orders, therefore, will rarely be made, and only when there is no alternative way of ensuring that justice is done to the plaintiff.

There are three essential pre-conditions for the making of such an order, in my judgment. First, there must be an extremely strong prima facie case. Secondly, the damage, potential or actual, must be very serious for the plaintiff. Thirdly, there must be clear evidence that the defendants have in their possession incriminating documents or things, and that there is a real possibility that they may destroy such material before any application inter partes can be made.

There is no denial that the phrase "a real possibility" that was employed by Ormrod LJ in *Anton Piller KG v. Manufacturing Processes Ltd and Others (supra)* has given rise to some confusion but fortunately it has been clarified by Dillon LJ in *Booker McConnell plc v. Plascow & Ors* [1985] RPC 425, and at p. 441, his Lordship had this to say:

> The phrase 'a real possibility' is to be contrasted with the extravagant fears which seem to afflict all plaintiffs who have complaints of breach of confidence, breach of copyright or passing off. Where the production and delivery up of documents is in question, the courts have always proceeded, justifiably, on the basis that the overwhelming majority of people in this country will comply with the court's order, and that defendants will therefore comply with orders to, for example, produce and deliver up documents without it being necessary to empower the plaintiff's solicitors to search the defendant's premises.

I have deliberated on the law and the facts surrounding the whole case and I must say that there was no justification for the plaintiff to seek an Anton Piller order. Sad to say that the plaintiff had offered no evidence to show that the defendants would or had the intention of destroying the essential evidence. In the statement of claim, the plaintiff listed the following irrelevant issues to persuade this court to grant the Anton Piller order:

(i) whether or not the first defendant did, as alleged, conspire with the second defendant to entice away the company's ex-employees in the persons of Christynn Ding Li Fong, Cindy Ee Geak Chin and Jeffrey Ong Hock Leng?;

(ii) whether or not the first defendant did, as alleged, induce the principals to terminate the agency arrangement with the plaintiff?;

(iii) whether or not the first defendant did, as alleged, steal the plaintiff's money by claiming commission in excess of the amount otherwise due to the first defendant while being employed as a sales manager?;

(iv) whether or not the first defendant did represent Interpac as the technical consultant on 4 July 2002 in the IKBN project related package of work?; and

(v) whether or not the first defendant did become a director in the second defendant's company on 1 March 2002 while the first defendant was still an employee of the plaintiff?

The stand of the defendants were that the plaintiff had deliberately put in the irrelevant issues with the invented tale of the purported physical theft of and misuse of information in regard to the documents in order to influence the court in granting the *ex parte* Anton Piller order. It was also the stand of the defendants that

the plaintiff could have sought the documents and information from the principals in order to secure the "price list" or the "confidential information" which were supplied by the plaintiff in the first place. Perhaps what was said by Brightman LJ in *Yousif v. Salama* [1980] 1 WLR 1540, 1543, should be reproduced as they were quite apt to the occasion at hand. This was what his Lordship said:

> I regard that (ie, the granting an Anton Piller order) as a very serious invasion of the rights of the defendants. Of course there is precedent for doing it. It is in the Anton Piller line of cases. The essential feature of those cases, as I understand them, is that there is a very clear *prima facie* case leading the court to fear that the defendant will conceal or destroy essential evidence in the grossest possible contempt of the court and – and this is an important second limb – that should he do so the whole processes of justice will be frustrated because the plaintiff will be left without any evidence to enable him to put forward his claim. In that limited class of case 1, for my part, think that the Anton Piller order is absolutely right. No court can stand by and see the processes of justice totally frustrated by a defendant in contempt of its order. But I cannot find anything in this case which brings it within that category. I regard the evidence of an intention to destroy the documentation as clumsy in the extreme. It is based upon an allegation of forgery in the indorsement of a cheque. This has nothing whatever to do with the destruction of documents which the plaintiff says that he fears.

It was submitted on behalf of the defendants that the plaintiff had influenced this court into granting the Anton Piller order on an *ex parte* basis for its own commercial gain without revealing that there were other third parties who have various contracts with the government agencies sharing the same premises with the second defendant. It was said that the plaintiff would abuse the Anton Piller order which it obtained by searching, inspecting and seizing the documents of a competitor. It must be borne in mind that cl. 2.1.4 of the Anton Piller order permits the plaintiff to gain commercially from anything which the plaintiff might read or see notwithstanding the objection of the person who was served with the order. In fact, the Anton Piller order authorised the plaintiff to commit an illegal act with the ultimate financial gain.

(D) The Anton Piller Order Is Too Wide, Imprecise, Vague And Oppressive

I have read the Anton Piller order granted to the plaintiff on an *ex parte* basis and it was certainly too wide, imprecise, vague and oppressive in the extreme. The wordings of the Anton Piller order were worded like this:

> Item 1: Any and all information, documents, records or otherwise pertaining to the tender strategy for various projects of the Ministry of Education, Ministry of Labour, Ministry of Defence, Ministry of Youth and Sports, all UITMs, University Technology Petronas, Polytechnics Merlimau, Tanjung Malim and Kulim, universities, polytechnics and colleges.
>
> Item 2: Any and all information, documents, records or otherwise pertaining to the Principals' (Feedback, Armfield, Didacta Italia, P.A. Hilton and Denford) price list of the scientific and educational equipment and apparatus for various projects of the Ministry of Education, Ministry of Labour, Ministry of Defence, Ministry of Youth and Sports, all UITMs, University Technology Petronas, Polytechnics Merlimau, Tanjung Malim and Kulim, universities, polytechnics and colleges.
>
> Item 3: Any and all information, documents, records or otherwise pertaining to the private and confidential documents and records of the plaintiff.

I agree that the defendants were put in a dilemma as to what documents that were covered under the Anton Piller order. According to the case of *Garden Cottage Foods Ltd. v. Milk Marketing Board* [1984] 1 AC 130, H.L., all orders of the court should be expressed in clear and unambiguous terms especially where (as in the case of injunctions) the failure to comply will constitute contempt of court. In *Attorney-General v. Staffordshire County Council* [1905] 1 Ch. 336, 342; *Morris v. Redland Bricks Ltd.* [1970] AC 652, 666-667; and *Collins v. Wayne Iron Works* [1910] 76 Atl. 24, 25, made it clear that an injunction should be framed so as to make it plain to those to whom it is directed, and to those who may be affected by it, the nature of the obligation arising from the order, so that they may know precisely what they are required to do or abstain from doing. These principles of law when applied to the facts of the present case weighed heavily in favour of the defendants.

I have taken an arduous route to consider encl. 14. Justice must be seen to be done. Other inconsequential submissions were not considered in this judgment as they were without merits. For the reasons as adumbrated above, I granted an order in terms of encl. 14 for prayers (1), (2), (3) and (4).